

DECISION



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PL-II
Kratzer
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-198089

DATE: June 23, 1981

MATTER OF: Constantine N. Polites & Co.

DIGEST:

1. Where procuring activity has established prima facie support for reasonableness of allegedly restrictive specifications and protester has failed to demonstrate that specifications are clearly unreasonable, specifications are not unduly restrictive of competition.
2. GAO will not question agency determination that a less restrictive description of the Government's requirements will meet its needs.

Constantine N. Polites & Co. (Polites) protests the inclusion of various specifications in request for proposals (RFP) N00406-80-R-0576 issued by the Naval Supply Center, Bremerton, Washington (Navy) for scaffolding components. In particular, Polites contends that certain specifications concerning the couplers which connect scaffolding pipes are unduly restrictive. We deny the protest.

We have on numerous occasions considered Navy requirements for scaffolding materials and have encouraged the Navy to develop a standard military specification for these items. See Constantine N. Polites & Co., B-187721, June 7, 1977, 77-1 CPD 401; Constantine N. Polites & Co., B-189214, December 27, 1978, 78-2 CPD 437. During Navy's development and review of its military specification for scaffolding, Polites protested that certain contemplated specifications were unreasonable and unduly restrictive. We dismissed that protest as premature because the military specifications had not yet been finalized and had not been directed toward a specific procurement. Constantine N. Polites & Co., B-189214, October 18, 1979, 79-2 CPD 267.

[Protest Alleging that RFP Specifications Are Unduly Restrictive]

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Military Specification Mil-S-29180 has now been finalized and, subject to three material exceptions, incorporated by reference in the RFP which Polites now finds objectionable. Polites' current protest incorporates the allegations of undue restrictiveness contained in the protest we dismissed as premature. Those allegations are concerned with the following requirements: type of bolt, steel grade of bolts, upsetting of bolts, not-dipped galvanization of coupler parts, 10° rotation limitation, and failure to specify size and weight of couplers. Additionally, Polites questions the propriety of the three material exceptions to the military specification which are enumerated in the RFP. These additional specifications require that couplers be right-handed, have four inch centers and have a 2000 pound minimum frictional holding capacity.

Generally, when a protester challenges specifications as unduly restrictive of competition, the procuring agency must establish prima facie support for its contention that the restrictions it imposes are reasonably related to its needs. The burden of proof, however, remains on the protester to show that the requirements complained of are clearly unreasonable. Constantine N. Polites & Co., B-189214, December 27, 1978, supra. This is so because the Government's contracting agencies are primarily responsible for determining the needs of the Government and the methods of accommodating such needs. 38 Comp. Gen. 190 (1958); Manufacturing Data Systems, Incorporated, B-180608, June 28, 1974, 74-1 CPD 348. Government procurement officials, who are familiar with the conditions under which supplies, equipment or services have been used in the past, and how they will be used in the future, generally are in the best position to know the Government's actual needs, and therefore are best able to draft appropriate specifications. Particle Data, Inc.; Coulter Electronics, Inc., B-179762, B-178718, May 15, 1974, 74-1 CPD 257. With these principles in mind, we will examine the specific allegations.

CAPTIVE BOLTS

In Constantine N. Polites & Co., B-189214, supra, we questioned an RFP restriction which designated eye-bolt design to the exclusion of a T-bolt design even if the T-bolt exhibited the swinging motion found desirable in the eye-bolt design. The military specification now requires captive bolts which are capable of movement only in a radial plane. Navy has limited

the movement of the bolt to prevent improper seating of the bolt during tightening.

Polites apparently contends that requiring a captive rather than T-bolt design is arbitrary and unduly restrictive. We do not agree. The term "captive bolt" includes both eye-bolts and T-bolts. Thus, T-bolt designs which exhibit the characteristic of movement in a single radial plane would meet the specification. Navy contends, and Polites does not dispute, that achieving this characteristic with the T-bolt design is not a difficult manufacturing process. We believe the Navy has overcome our original objections and, therefore, we conclude that this requirement is not unduly restrictive.

BOLT STEEL QUALITY

Polites also questions the requirement that bolts be constructed of medium carbon steel and possess a tensile strength of 120,000 pounds per square inch. Navy reports that the required bolts are readily available and are normally used in situations which require high strength. Navy views the tensile strength requirement as necessary to insure reliability of coupler components.

Polites responds that the low carbon steel bolts of lower tensile strength which it uses in its couplers have not been found to be unsafe. We do not find, however, that the mere assertion that bolts of lesser tensile strength may be adequate to meet the agency's minimum needs is sufficient to sustain Polites' burden to demonstrate that the requirement is clearly unreasonable. We find no merit to this assertion.

UPSETTING OF BOLTS

Polites also believes that the requirement that bolts be upset, a process which discourages the inadvertent removal of nuts, is unreasonable. We disagree. The purpose of this requirement is to preclude the loss of bolts during disassembly and the threading of metric nuts on United States threads (or vice versa) which prevents proper tightening.

Polites contends that the threading of a United States nut on a metric bolt is impossible, and the threading of a metric nut on a United States bolt produces a connection which is so

loose that the error is immediately obvious to the assembler. Polites also asserts that the process of upsetting, although easy and inexpensive if it is already part of the contractor's process, is inordinately expensive to those suppliers who do not usually upset bolts.

We find these arguments unpersuasive. Since the only evidence in the record concerning the possibility of mixing threads is the conflicting statements of the agency and the protester, we must accept the view of the agency on this matter. Achievement Products, Inc., B-192621, January 22, 1979, 79-1 CPD 36. Even assuming that protester's assertion concerning the incompatibility of threads is accurate, we believe the upsetting requirement is justifiable merely to prevent the expense and inconvenience of replacing lost bolts. We also note that the specifications require a cap opening which permits assembly and disassembly without removal of the nut. The obvious purpose of this requirement is to reduce labor costs in assembly and disassembly. To the extent that upsetting facilitates this labor-saving method, the reasonableness of this requirement is further established. In view of the legitimate need for upsetting, the fact that upsetting may be more expensive for certain suppliers than others is without legal significance. The Government is not obliged to equalize the competitive positions of all potential bidders. Tenavision, Inc., B-199485, July 28, 1980, 80-2 CPD 76.

HOT-DIPPED GALVANIZATION

The military specification requires that all parts of the coupler be hot-dipped galvanized. Polites concedes that hot dipped galvanization provides more protection than electro-galvanization, the process it favors, but contends that damage to the coupler usually occurs through abuse rather than corrosion. Polites alleges that the electro-galvanized components it has supplied to the Government in the past have not precipitated any written complaint. Thus, Polites believes that the hot-dipped galvanization requirement is unreasonable. Its objection to the hot-dipped galvanizing process, however, is based primarily on the limitations of its own manufacturing abilities as dictated by the design of its components.

The Navy has found from field usage that components with other than hot-dipped galvanized finishes corrode and deteriorate rapidly in the marine environment. Polites has not offered any positive evidence to the contrary. The absence of written complaints in general is not sufficient to establish that the finish Polites uses on its materials is adequate to meet the

specific needs of the agency. Thus, because Navy is in the best position to assess the prior performance of various finishes and determine its minimum needs, we find this specification to be reasonable. Constantine N. Polites & Co., B-193730, September 10, 1979, 79-2 CPD 183.

10° ROTATION TEST

The military specifications require that randomly sampled components meet a number of stress tests. Polites objects to the requirement that right angle and swivel couplers deflect fewer than 10° from horizontal when subjected to test weight loads. Polites apparently designs its couplers to rotate more than 10° on the theory that greater rotation reduces slippage along the vertical pipe or tube. Navy has limited rotation to 10°, however, to insure that the coupler transmits the load parallel to the vertical tube rather than perpendicular to it. Perpendicular transmission of load creates a risk that the pipe will collapse and induce the failure of the entire scaffolding structure, according to the agency. Additionally, the 10° test serves as check on the integrity of the connecting pin (which connects the coupler cap and body) and insures the proper design and construction of the swivel coupler. Polites has offered no evidence to the contrary, and we, therefore, view the 10° rotation test as a reasonable means of insuring the safety of the scaffolding.

LACK OF SIZE AND WEIGHT LIMITATION

Polites also asserts that the military specification is unreasonable and imbalanced in that it does not take size and weight of couplers into consideration. Polites claims this assertion is supported by our holding in Constantine N. Polites, B-189214, December 27, 1978, supra.

That decision is inapposite here. In that decision, our concern about size and weight of couplers was generated by two particular specifications: quality of steel used to construct the coupler and eye-bolt design of the coupler. Navy attempted to justify the steel quality requirement as limiting component size and weight. We rejected this justification, noting that merely specifying composition of the coupler would not determine its size and weight. We suggested that Navy achieve size and weight limitation by actually establishing size and weight parameters in the RFP. Navy attempted to justify its eye-bolt design based upon the relative ease of assembling

eye-bolt couplers. In connection with this specification, we stated that Navy should have considered the extent to which size and weight would affect the ease of assembly.

In the instant solicitation, Navy has specified neither the quality of steel (except for coupler bolts) nor, as mentioned above, eye-bolt design. Hence, our concern about the failure to establish size and weight limitations is diminished. Moreover, Navy reports that it considered establishing such a limitation but concluded that size and weight restrictions were unnecessary because all known commercially available couplers (the specifications provide that all scaffolding components shall be the standard commercial product of the manufacturer) are of sizes and weights which are acceptable to Navy's users. We believe these factors show that it was reasonable for Navy not to specify the maximum size and weight of the coupler. Polites has offered nothing of substance to the contrary.

RIGHT HANDED AND FOUR INCH CENTER REQUIREMENTS

As noted above, the Navy, following a conference with industry representatives, including Polites, designated three specifications in addition to the military specification. These specifications include the requirements that right angle couplers be right-handed (*i.e.*, the coupler must be configured to enable the assembler to manipulate clamping nuts with the right hand while positioning the coupler with the left hand) and that couplers have four inch centers (*i.e.*, the coupler must be so configured that when two couplers are butted against each other, the distance between the centers of the couplers is four inches). Polites contends that these requirements are unduly restrictive in the absence of size and weight requirements in the specifications. We addressed this specific allegation in the context of Constantine N. Polites, B-189214, December 27, 1978, supra., wherein we found that both the righthanded and four inch center requirements were unobjectionable. Polites has presented no new evidence which persuades us to alter our original position.

MINIMUM FRICTIONAL HOLDING CAPACITY

Finally, Polites contends that Navy lowered the minimum frictional holding capacity from the 4000 pounds designated in the military specification, to 2000 pounds in order to

accommodate Patent Scaffolding Company. Polites alleges that Patent Scaffolding Company couplers failed at pressures below 4000 pounds in tests conducted at Norfolk Naval Shipyard.

Navy responds that it reduced the requirement because the 4000 pound requirement tended to disqualify heavy duty couplers which distribute the weight over a broader area than other couplers. Navy reports that no shipyard had ever experienced a problem with heavy duty couplers. Navy further states that industry representatives agreed that the test had little correlation to actual performance.

Assurance that sufficiently vigorous specifications are used is ordinarily of concern primarily to procurement personnel and user activities. It is they who must suffer any difficulties which result from inadequate equipment. Miltope Corporation-Reconsideration, B-188342, June 9, 1977, 77-1 CPD 417. Therefore, we generally will not question an agency determination that a less restrictive description of the Government's requirements will meet its needs. Value Precision, Inc., B-191563, August 7, 1978, 78-2 CPD 97.

CONCLUSION

In our view, Navy has established prima facie support for the reasonableness of each allegedly restrictive specification and Polites has failed to sustain its burden to demonstrate that the requirements are clearly unreasonable. Further, since these matters have been considered on a number of separate occasions, we consider this decision to be dispositive of the issues which have been discussed. We think Polites has now had an ample opportunity to air its objections to these procurements.

The protest is denied.

Milton J. Aorolar
Acting Comptroller General
of the United States